

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)	
to commence consideration of the various regulatory)	
reviews associated with CONSUMERS ENERGY)	
COMPANY's decision to terminate early its)	
power purchase agreement with Entergy Nuclear)	Case No. U-18218
Palisades, LLC, a subsidiary of Entergy Corporation,)	
for the output of electric power from the Palisades)	
Nuclear Power Plant.)	
_____)	

At the January 20, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On December 8, 2016, Consumers Energy Company (Consumers) announced that it reached an agreement with Entergy Corporation (Entergy) for early termination of a power purchase agreement (PPA) whereby Consumers purchases electricity generated by the Palisades Nuclear Power Plant (Palisades) from Entergy Nuclear Palisades, LLC (ENP), a subsidiary of Entergy. The PPA in question provides for Consumers to purchase nearly all of Palisades' electric generation, and was approved by the Commission in the March 27, 2007 order in Case No. U-14992. The PPA has a 15-year term, and was intended to remain in effect until April 11, 2022. Consumers announced that early termination of the PPA is expected to lower customer costs by up to \$172 million, and contends that early termination makes sense in light of changed

market conditions and the existence of less expensive alternatives to the power offered under the PPA.

At the same time, Entergy announced that it plans to close Palisades permanently on October 1, 2018. Entergy reports that the transaction is expected to result in a total of \$344 million in gross savings to Consumers, derived from the replacement of relatively higher-priced nuclear generation with lower cost alternatives. The savings would be split evenly between a buyout payment to Entergy and a projected reduction in Consumers' customers' rates. Entergy would receive a \$172 million buyout payment from Consumers in exchange for early termination of the PPA. The remaining \$172 million would be allocated to Consumers' customers, who, according to information provided by Consumers and Entergy, are projected to receive a reduction in costs from 2018 to 2022, the remainder of the life of the PPA. Consumers and Entergy have agreed to terminate the PPA effective May 31, 2018, at which time CMS Energy (CMS) and ENP will enter into a new PPA under which Palisades will continue to operate until October 1, 2018, and will then cease operations. Entergy indicates that it will notify the Midcontinent Independent System Operator, Inc. (MISO) and the U.S. Nuclear Regulatory Commission (NRC) of its intent to permanently close and decommission Palisades. Consumers has also indicated that it intends to recover through rates a securitization¹ of the \$172 million buyout fee due to Entergy, and that an application for a financing order will be filed shortly with the Commission.

On December 20, 2016, the Commission opened this docket to facilitate the process of receiving initial information that the Commission will need to begin evaluating Consumers' plans,

¹ Securitization is the process by which a utility, following the issuance of a financing order by the Commission, replaces relatively high-cost debt and equity with lower-cost debt in the form of securitization bonds. MCL 460.10h-460.10o. In the event of a securitization filing, the Commission intends to acquire the services of an independent financial analyst, an energy market analyst, and an expert bond attorney under MCL 460.10i(10).

and issued an order seeking more detailed information regarding calculation of the PPA buyout amount and the plan for replacement power (December 20 order). On January 6, 2017, Consumers filed a response to the December 20 order.

In the response, Consumers indicates that a decision on whether to refuel Palisades, to ensure that it could run through April 2022, must be made “by the fall of this year. Consequently, the agreement between Consumers Energy and Entergy requires a final order not subject to further appeal by September 30, 2017.” Consumers’ response, Question 6, p. 1. Consumers also states that it has developed a replacement power plan that relies on “(i) increased energy efficiency; (ii) increased commercial and industrial demand response; (iii) acceleration and increase in the size of the Cross Winds Energy Park; (iv) amending the Company’s existing PPA with T.E.S. Filer City; and (v) continued operation of the Company’s Gaylord, Straits, and Campbell peaking combustion turbines, in total delivering 470 additional Zonal Resource Credits (‘ZRCs’) by 2021.” *Id.*, Question 3, p. 1.

There are a number of ways in which Consumers could proceed before the Commission in order to pursue recovery of a payment associated with the early termination of the Palisades PPA. In Consumers’ response to the December 20 order, the utility indicated that its preference is to pursue a securitization filing. *Id.*, Question 6, p. 2. While a securitization filing typically requires a 90-day determination, the Commission observes that the complexity of the surrounding issues will lengthen the process. *See*, MCL 460.10i(6). As noted in the December 20 order, there are a number of determinations the Commission must make, such as ensuring resource adequacy and verifying customer savings, prior to being able to evaluate the best method for Consumers to recover any buyout payment. Such determinations are complex, and will require extensive analysis and significant time on the part of the Staff and other parties. Understanding that timing

is an important aspect of Consumers' plan and that a determination is needed by fall of 2017, and assuming that an application is imminent, the Commission intends to make a final determination on Consumers' application for a financing order no later than August 31, 2017. In addition, the Commission acknowledges that there is need for certainty for the numerous stakeholders, which reinforces its view that a determination must be made as expeditiously as possible to protect the public. Throughout the process, there are a multitude of variables outside of the Commission's control; it is essential for Consumers and all other parties to the case to be as responsive as possible to avoid unnecessary delays.

Should Consumers decide to pursue a single application for a financing order, the following issues, at a minimum, would need to be addressed in order for the Commission to be able to evaluate the plan on a holistic basis.

A. Regulatory Asset Treatment

1. MCL 460.10h(g) defines "qualified costs" as "an electric utility's regulatory assets as determined by the commission . . . plus any costs that the commission determines that the electric utility would be unlikely to collect in a competitive market, including, but not limited to . . . the costs of a commission approved restructuring, buyout or buy-down of a power purchase contract." The Commission must determine whether the buyout amount may be characterized and recorded as a regulatory asset in order to render it a qualified cost under MCL 460.10i(2). In making this finding, the Commission will consider all of the issues related to cost savings, electric reliability, resource adequacy, and risk management described herein, and must be able to make the findings required under MCL 460.10i(2)(a)-(d).

B. Cost Savings

1. The buyout amount must be found to be a reasonable and prudent expense in order to be recovered from customers. The Commission must determine whether and how the payment is justified based on expected customer savings. While the initial information filed by the utility in response to the December 20 order focuses on the cost of the PPA versus projected market prices, the Commission views projected market prices as merely one consideration given that Consumers has a replacement power plan in place and would not be expected to rely on markets to replace the energy and capacity supplied by Palisades. The cost of replacement power provides an actual benchmark to use in comparison to the costs under the PPA, and the Commission views the costs associated

with the replacement power portfolio as a more reliable way to determine customer savings and the value of the buyout.

- a. The Commission must determine the difference between the near-term and long-term energy and capacity costs for the PPA and for the replacement power portfolio based on detailed cost breakdowns for energy and capacity for each component of the portfolio, e.g., energy efficiency, T.E.S. Filer City, Dearborn Industrial Generation (DIG), etc., and for the overall portfolio, as well as any back-up energy and capacity options.
- b. The Commission must assess, with respect to both the PPA and the individual components of the replacement power portfolio, the annual effects on the revenue requirement, fuel costs, company earnings, and rates. This determination must rely on a sensitivity analysis for all calculations based on different load levels, fuels, and all other potential scenarios.
- c. Notwithstanding the statement above regarding market price forecasts, the Commission must examine the difference between market cost projections for energy and capacity with and without the operation of Palisades; this analysis should include robust sensitivity results for market projections and key factors, as well as an examination of all market conditions that would materially affect the projected customer savings.
- d. The Commission must determine how the claimed savings were allocated between Consumers' customers and Entergy, and whether that allocation is reasonable in light of risks, benefits, and other factors, including the benefits of the buyout payment, if any, as compared to allowing Entergy to exercise its right to terminate for economic reasons on 12 months' notice.

C. Electric Reliability and Resource Adequacy

1. The Commission must determine whether resource adequacy will be ensured in Zone 7 if the buyout goes forward. The Commission will examine the overall outlook for the Planning Reserve Margin Requirement and the Local Clearing Requirement, as well as actual facilities available, in Zone 7 with the loss of Palisades in October 2018, and determine whether it is reasonable.
2. The Commission must determine whether the schedules and key milestones for the various replacement power options are reasonable, and whether the plan can be implemented under the necessary schedule while avoiding capacity shortfalls; this determination should consider all risks associated with execution of the plan and any mitigation options and impacts.
3. The Commission must determine whether Palisades would count as capacity (a zonal resource credit) for planning year 2018 under MISO's Module E tariff. If not, the Commission must determine what will be the impact on the Zone 7 capacity situation and Consumers' cost for replacement in that planning year in order to meet MISO capacity

requirements. If Palisades does not count as a capacity resource under MISO rules, the Commission will also need to consider whether customers will still be paying the full contract price to Entergy during that timeframe (June 1 to Oct 1).

D. Risk Management

1. Assuming the Commission approved recovery of the buyout payment, and notwithstanding the NRC's oversight, the Commission must decide how it can be assured that storage of nuclear waste and decommissioning activities are adequately funded in order to protect public safety.
2. Assuming the Commission approved recovery of the buyout payment, the Commission will consider and determine by what mechanism it could ensure that the claimed savings to customers materialize as the replacement power portfolio is implemented, so that ratepayers realize the anticipated savings. The Commission must consider options that allow Consumers to receive reimbursement of the buyout payment in a manner that corresponds with the timing of when savings are received by customers.
3. The Commission will need to consider impacts on resource diversity as well as the potential risks based on different fuel price projections.
4. The Commission must take account of all regulatory approvals or determinations pertaining to the replacement power portfolio that should be considered or granted in a securitization proceeding, given their impact on the buyout payment, and on the cost and reliability of the replacement power supplies (e.g., accounting treatment, Code of Conduct). For example, Consumers has indicated that it is considering purchasing a power plant owned by an affiliate (DIG), as well as a potential PPA with T.E.S. Filer City (of which CMS's unregulated affiliate owns a stake). The Commission must determine how energy waste reduction and demand response would be handled from a ratemaking/regulatory standpoint in light of legislative changes lifting the cost recovery cap; and must take into consideration all other regulatory approvals (FERC, Michigan Department of Environmental Quality) that are needed to implement these options, and the expected timing of those matters.

This list is not exhaustive, but rather indicates issues for which, from the outset, a strong factual record will be needed in order to inform a determination on the regulatory treatment of the buyout payment. To expedite any review, there are also several documents that will be essential. Namely, the Commission will require a copy of the agreement to terminate the PPA executed between Consumers and Entergy, as well as a copy of the Non-Binding Study Regarding Potential SSR Status, dated July 11, 2016, to be filed under seal. The Commission also stresses the

importance of Consumers being as complete, cooperative, and timely as possible in its responses to discovery requests to avoid any unnecessary delays and to allow a full review of issues.

THEREFORE, IT IS ORDERED that Consumers Energy Company shall address the criteria listed herein in any filing for a financing order related to the Palisades Nuclear Power Plant power purchase agreement; and this docket is closed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of January 20, 2017.

Kavita Kale, Executive Secretary